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No. 81-

Office-Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF

(Over)

Appeal From The Court Of Appeals Of The State Of New York

JURISDICTIONAL STATEMENT

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EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

QUESTION PRESENTED

Do specially enacted legislative grants create individual vested rights which may not be divested by subsequent specially enacted legislation?

PARTIES TO THE PROCEEDING

Action No. 1

PRUDENCE J. CAMARDO, as a resident, taxpayer and parent of school children residing in Gates Common School District No. 6, Town of Greece, Monroe County, New York suing on behalf of herself and of all other residents, taxpayers and parents residing in said School District similarly situated,

and

ARTHUR FALZONE, as a resident, taxpayer and parent of a school child residing in Common School District No. 8 of the Town of Greece, Monroe County, New York, suing on behalf of himself and all other residents, taxpayers and parents residing in said School District similarly situated,

and

HENRY J. PAPE, as a resident, taxpayer and parent of a school child residing in Common School District No. 10 of the Town of Greece, Monroe County, New York, suing on behalf of himself and of all other residents, taxpayers and parents residing in said School District similarly situated,

and

IVAN WAHLS and LILLIAN WAHLS, as residents, taxpayers and parents of a school child residing in Union Free Four School District of the Town of Greece, Monroe County, New York, suing on behalf of themselves and of all other residents, taxpayers and parents residing in said School District similarly situated,

and

BOARD OF EDUCATION OF GREECE UNION FREE NO. FOUR SCHOOL DISTRICT of the Town of Greece, Monroe County, New York,

and

BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 10 of the Town of Greece, Monroe County, New York,

and

BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 8 of the Town of Greece, Monroe County, New York,

and

BOARD OF TRUSTEES OF GATES COMMON SCHOOL DISTRICT NO. 6 of the Town of Greece, New York,

and

DANIEL A. STETZEL, SR., as a resident, taxpayer and parent of a school child residing in Union Free No. Four School District, Town of Greece, Monroe County, New York, suing on behalf of himself and of all other residents, taxpayers and parents residing in said School District, and parents similarly situated in other plaintiff School Districts,

Appellants,

vs.

CITY OF ROCHESTER, NEW YORK,

and

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, City of Rochester, New York,

and

BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, Town of Greece, New York,

and

STATE OF NEW YORK,

and

BRIGHTON COMMON SCHOOL DISTRICT NO. TWO, Town of Brighton, New York,

and

BRIGHTON TEN COMMON SCHOOL DISTRICT, Town of Brighton, New York,

and

BRIGHTON FIVE COMMON SCHOOL DISTRICT, Town of Brighton, New York,

and

BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, Town of Gates, New York,

and

BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, Town of Penfield, New York,

and

BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, Town of Henrietta, New York,

Appellees.

Action No. 2

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, as residents, property owners and taxpayers residing in former Brighton five common school district on behalf of themselves and all other similarly situated residents, property owners and taxpayers residing in said district,

and

BERNADETTE EUBLACKER and JAMES and PATRICIA BRITT, as residents, property owners, taxpayers and parents of school age children residing in former Brighton five common school district, on behalf of themselves and all other similarly situated residents, property owners, taxpayers and parents residing in said district,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

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Action No. 1

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vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

Appeal From The Court Of Appeals Of The State Of New York

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Order of the New York State Court of Appeals dismissing appellants appeal therein, and thereby affirming the opinion of the Appellate Division of the Supreme Court of New York for the Fourth Judicial Department are reprinted in the appendix herein. Those Order and Opinion have not been published.

JURISDICTION OF THE COURT

This appeal arises from an action seeking a declaratory judgment finding that a 1975 Act of the State of New York was repugnant to the Constitutions of the State of New York and the United States.

The Appellate Division of the State Supreme Court for the Fourth Judicial Department affirmed a lower court decision upholding the constitutionality of the subject Act.

An appeal was taken to the New York Court of Appeals, which appeal was dismissed by that Court *sua sponte* on April 9, 1981.

The Notice of Appeal to this Court was filed in the Court of Appeals of the State of New York on June 29, 1981.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 10 of the Constitution of the United States provides:

"§10. Restrictions upon powers of states

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Product of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

CHAPTER 359 OF THE LAWS OF NEW YORK, 1915

This is the first of three statutes by which territory was annexed to the City of Rochester, New York. Its provisions are lengthy and in addition to accomplishing the annexation, provides for street and sewer maintenance, streetcar fares and related administrative matters. These provisions are not relevant to the issues herein.

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the city of Rochester," generally.

Became a law April 26, 1915, with the approval of the Governor. Passed, three-fifth being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

. . .

§3. Subdivision seven of section three hundred and eighty-three of said act, as amended by chapter six hundred and fifty-nine of the laws of nineteen hundred and thirteen, is hereby amended so as to read as follows:

7. Non-resident pupils. To allow the children of persons not residents of the city to attend the schools under the care and control of the board, upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed to school districts numbers two and ten of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, and of school district number four of the town of Greece, as the same existed on the first day of March, nineteen hundred and

fifteen, to attend without payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

CHAPTER 547 OF THE LAWS OF NEW YORK, 1918

This is the second of three statutes by which territory was annexed to the City of Rochester, New York. Its provisions are lengthy and in addition to accomplishing the annexation, provides for street and sewer maintenance, streetcar fares and related administrative matters. These provisions are not relevant to the issues herein.

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the city of Rochester," generally.

Became law May 10, 1918, with the approval of the Governor. Passed, three-fifths being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§8. Such chapter is further amended by adding thereto a new section to be numbered three hundred and eighty-one, and to read as follows:

§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the town

of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number four of the town of Greece as the same existed on the first day of March, nineteen hundred and fifteen, and of school district number six of the town of Gates and numbers eight and ten of the town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

CHAPTER 519 OF THE LAWS OF NEW YORK, 1922

This is the third of three statutes by which territory was annexed to the City of Rochester, New York. Its provisions are lengthy and in addition to accomplishing the annexation, provides for street and sewer maintenance, street car fares and related administrative matters. These provisions are not relevant to the issues herein.

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the City of Rochester," generally.

Accepted by the City.

Became law April 6, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§6. Section three hundred and eighty-one of such chapter, as added by chapter five hundred and forty-seven of the laws of nineteen hundred and eighteen, is hereby amended to read as follows:

§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number five of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number five of the town of Brighton, as the same existed on the first day of March, nineteen hundred and twenty-two, of school district number four of the town of Greece as the same existed on the first day of March, nineteen hundred and fifteen, and of school district number six of the town of Gates and numbers eight and ten of the town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

CHAPTER 129 OF THE LAWS OF NEW YORK, 1975

"AN ACT to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding any other provisions of any general, special or local laws, rules or regulations to the contrary:

a. Greece common school districts numbers eight and ten, Greece union free number four school district and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are hereby abolished and Greece union free number four school district, Greece common school districts numbers eight and ten and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are added to and made a part of Greece central school district of the town of Greece, Monroe county.

b. The southern part of Gates common school district number six is herreby abolished and that part which is contained within the town of Gates is added to and made a part of Gates Chili central school district.

c. Brighton common school district number two and Brighton ten common school district are hereby abolished and made a part of Penfield central school district.

d. Brighton five common school district is hereby abolished and made a part of the Rush-Henrietta central school district.

§2. a. Real or personal property possessed by any of the school districts being abolished herein shall remain the property of the said district being abolished.

b. Any district being abolished herein which on the effective date of this act, owns real or personal property shall continue to exist in law for the purpose of disposing of and settling any property interests it may be possessed of and to that end the trustees and other officers shall continue in office and have whatever authority necessary to implement the provisions of this subdivision.

c. The provisions of sections fifteen hundred seventeen and fifteen hundred eighteen of the education law shall apply to all cases in section one hereof.

§3. a. The city school district of the city of Rochester shall guarantee seats in the schools of the city school district

to all students from the common school districts, or union free school district, abolished by this act who are enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such subject, however, to a rate of tuition computed in accordance with approved state procedures.

b. The central school districts designated in section one of this act shall be obligated to pay the tuition as provided for in subdivision a of this section for students residing in the respective central school districts who, on and after July first, nineteen hundred seventy-five, choose to remain in schools in the city school district, and shall also be obligated, on and after such date, to provide transportation as required by law or as authorized by the voters of the respective central school districts. Such obligation shall extend only to students who were enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such students and shall continue until such students and siblings complete the twelfth grade.

c. With the exception of those instances enumerated in this section, the city of Rochester, on and after July first, nineteen hundred seventy-five shall no longer be required to accept students from the school districts being abolished herein into its school district without the payment of tuition.

§4. a. Real property in such common school districts and the union free school district abolished in section one of this act shall be subject to taxation pursuant to article thirteen of the real property tax law; provided, however, that such real property shall be exempt from taxation by the central school district in which located to the extent of eighty percent of the tax which would otherwise be so payable for the fiscal year commencing July first, nineteen hundred seventy-five, to the extent of sixty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-six, to the extent of forty percent of such tax for the fiscal

year commencing July first, nineteen hundred seventy-seven, and to the extent of twenty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-eight.

b. The central school districts in which real property is located, which property is exempted from taxation by the foregoing subdivision of this section, shall be held harmless from loss of revenue because of such exemption. Such central school districts shall make all budget calculations, shall be treated for all state aid and apportionment of public money purposes, and shall levy its local property taxes as if such real property were not exempt. The total amount of the exempt portion of any such real property taxes, as provided in subdivision a of this section shall be billed to the commission of education on or before October first of each such year and such commissioner is hereby authorized and directed to apportion such amounts to such central school districts on or before November first of each such year, provided that such moneys shall be treated as tax moneys for all purposes of article seventy-three of the education law and provided further, that no interest or penalties shall be charged by anyone on such payments, provided further, that notwithstanding the provisions of any general or special law, the commissioner of education, in computing the aid ratio of any central school district of which the common school districts and union free school district referred to in section one of this act shall have become a part, shall permit the use of the additional resident weighted average daily attendance for aid ratio purposes during the school years nineteen hundred seventy-five-seventy-six and nineteen hundred seventy-six-seventy-seven, which said additional resident weighted average daily attendance shall be that of students from such former common school districts and union free school district who shall be attending the schools of such central school districts during such two school years.

§5. The sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary,

is hereby appropriated out of any monies in the state treasure in the general fund to the credit of the local assistance fund, not otherwise appropriated, to the education department for the purposes of section four of this act, payable on vouchers certified or approved by the commissioner of education upon audit and warrant of the state comptroller as provided by law.

§6. This act shall take effect May thirty-first, nineteen hundred seventy-five, except that section five thereof shall take effect July first, nineteen hundred seventy-five and except further that for the purposes of article seventy-three of the education law, this act shall take effect July first, nineteen hundred seventy-five."

CHAPTER 746 OF THE LAWS OF NEW YORK, 1975

"An Act to amend chapter one hundred twenty-five of the laws of nineteen hundred seventy-five, entitled "An Act to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor", in relation to severability.

Approved and effective Aug. 8, 1975.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section six of chapter one hundred twenty-five of the laws of nineteen hundred seventy-five, entitled "An Act to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor", is hereby renumbered to be section seven, and a new section, to be section six, is hereby inserted therein to read as follows:

§6. If any section or subdivision of this act or any part thereof shall be adjudged by any court of competent jurisdiction to be unconstitutional, invalid or ineffective such

judgment shall not affect, impair or invalidate the remainder or any other section or subdivision thereof.

§2. This act shall take effect immediately."

STATEMENT OF THE CASE

By three special legislative enactments adopted by the State of New York in 1915, 1918 and 1922 large areas of land theretofore in the Town of Greece, New York, were annexed to the City of Rochester, New York. The land so annexed included much of the territory and most of the school facilities of four existing school districts. Thus, those remaining areas of the said school districts which were not part of the annexations were left without facilities and a greatly reduced tax base. To compensate for this, the annexation statutes provided that children residing in those areas were to be granted permission to attend schools in the City of Rochester School District without the payment of tuition.

The appellants herein are resident taxpayers of those areas which were not annexed and whose children have attended the City School District of the City of Rochester, New York and the governing boards of the four school districts which continued to exist in their diminished territory after the annexations.

In 1975 the four remaining school districts were abolished by an Act of the State of New York and this territory consolidated with the Greece Central School District.

The right to attend schools of the City of Rochester School District was extinguished except for those already enrolled and their siblings, and the appellant residents became subject to taxation by the Greece Central School District.

The Appellants raised the question herein presented in the Court of first instance by service of a Summons and Complaint

alleging the unconstitutionality of the subject act. The Court of first instance (Supreme Court, Monroe County, New York) found, after testimony on the merits, that the act was constitutional.

An appeal was taken to the Appellate Division of Supreme Court for the Fourth Judicial Department. The question herein presented was raised in that court at inception of the appeal and by Briefs and Oral Arguments. The Appellate Division affirmed the lower court, finding the subject act constitutional.

An appeal was taken to the Court of Appeals of the State of New York. The question herein presented was raised at inception of the appeal with the filing of a jurisdiction statement under New York State Rules. The Court of Appeals dismissed the appeal *sua sponte,* holding that no substantial constitutional question was involved.

SUBSTANTIALITY OF FEDERAL QUESTION

This appeal presents important and substantial questions of Federal interest with respect to the federal constitutional limitations upon the powers of the State.

In the early part of this century, the State of New York, at the request of the City of Rochester, enacted special laws to annex territory to that city. As an integral part of that legislation the State granted to a limited number of children who resided outside the city limits the right to attend city schools. In 1975 the State, while leaving the annexations intact, repealed the rights granted to those children.

Appellants contend that the original annexation statutes by reason of their special nature constituted contracts between the State and the individuals they were intended to benefit and that their subsequent repeal is an impairment of those rights. Such impairment falls squarely with the prohibition contained in Article I, Section 10 of the Constitution of the United States

which, in absolute terms, prohibits any state from enacting any law impairing the obligation of contracts.

The New York Court of Appeals, in refusing to hear the appeal from the decision of the lower Appellate Court affirmed that court's decision. In its decision, the text of which is reproduced in the Appendix hereto, the Appellate Division recognized that "the essential question is the existence of a contractual relation". We respectfully submit, that in finding that, as a matter of state law, no contractual relationship existed, the Court failed to give force to federal recognition of the immutable nature of those special acts by which grants, privileges or exemptions are given, and the protection afforded them by the Constitution of the United States.

The Supreme Court of the United States has long declared that a "legislative enactment may contain provisions which, when accepted as a basis for action by individuals, become contracts between them and the State or its subdivisions with the protection of Article 1, Section 10 [of the United States Constitution]". *Indiana ex rel Anderson v. Brand,* 303 U.S. 95.

In its affirmation of the lower court decisions this Court has explicitly held that, "When the State through its legislature grants a franchise, privilege, or exemption to a corporation, either in the act of incorporating it, or by other legislation, followed by action of the corporation under or in reliance upon the grant so made, it constitutes a contract, based on valuable consideration, the obligation of which cannot be impaired by subsequent legislation . . . [Citations]". *People v. Mealy,* 254 U.S. 47.

The appellants herein bought their homes, and made educational plans for their children in reliance upon the special promises made to them and the federal guarantee that those promises would be kept.

Breach of that promise by the State of New York brings before the Court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral arguments, for their resolution.

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APPENDICES

APPENDIX A — Order of the Court of Appeals of the State of New York (filed April 9, 1981)

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of April A.D. 1981

PRESENT, HON. LAWRENCE H. COOKE, *Chief Judge, presiding.*

4 *Mo. No. 391 SSD 48*

Prudence J. Camardo, et al.,

Appellants,

vs.

The Board of Education of the City of Rochester and the City of Rochester, et al.,

Respondents.

(and another action.)

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

/s/ JOSEPH W. BELLACOSA
Clerk of the Court

APPENDIX B — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

SUPREME COURT OF
THE STATE OF NEW YORK
APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

PRESENT: SIMONS, J.P., HANCOCK, SCHNEPP, CALLAHAN, MOULE, JJ.

Prudence J. Camardo, et al.,

Appellants,

v.

The Board of Education of the City School District and The City of Rochester, et al.,

Respondents,

And Another Action.

The above named Prudence J. Camardo, et al. having appealed to this Court from a judgment of the Supreme Court, entered in the Monroe County Clerk's office on April 3, 1979 and said appeal having been argued by Jeffrey Marks of counsel for appellants, Reynolds Hahn of counsel for respondents Board of Education of City School District and City of Rochester Shirley Siegel of counsel for respondent, State of N.Y. William Easton of counsel for respondent Board of Education of Greece Central School District Robert Wendt of counsel for respondent Board of Education of Rush-Henrietta Central School District, and due deliberation having been had thereon

It is hereby ORDERED, That the judgment so appealed from be and the same hereby is unanimously affirmed with costs.

Memorandum, which is hereby made a part hereof.

Entered: DEC 12 1980

MARY F. ZOLLER, *Clerk*

APPENDIX B — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

995. (Monroe Co.) — Prudence J. Camardo, et al, Appellants v. The Board of Education of the City School District and the City of Rochester, et al, Respondents, and Another Action. — Judgment unanimously affirmed with costs. Memorandum: By chapter 359 of the Laws of 1915, chapter 547 of the Laws of 1918 and chapter 519 of the Laws of 1922, the City Charter of Rochester was amended to bring lands formerly a part of the Towns of Greece and Brighton within the city boundaries. Permission was granted to children in unannexed school districts, whose school facilities were annexed, to attend Rochester city schools without payment of tuition. The tuition-free attendance of these nonresident children continued until enactment of chapter 125 of the Laws of 1975 (May 1975 Act). The May 1975 Act provides that these unannexed school districts be abolished and added to existing central school districts; that the city school district guarantee seats to all students from the abolished districts and their siblings, enrolled in city schools as of May 31, 1975; that the property owners in the abolished districts be required to pay the taxes of the appropriate central school district at the rate of 20 percent the first year, increasing by 20 percent each year to 100 percent the fifth year; and that the State pay 2.5 million dollars to the central school district for revenues lost by operation of these tax exemptions.

Plaintiffs brought this action alleging that the earlier legislation created a contract which promised them the right to maintain their own school districts and the right to attend city schools tuition-free, and that the contract could not be repudiated by the May 1975 Act. Plaintiffs contend that the May 1975 Act unconstitutionally impairs the obligation of contract, and, in the alternative, they challenge its validity on four different constitutional grounds. At the close of plaintiffs' case, defendants moved for declaratory judgment. The court

APPENDIX B — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

granted defendants' motion and entered judgment dismissing the complaint, holding that plaintiffs failed to prove a breach of any contractual obligation between the City, State and affected homeowners; that plaintiffs failed to prove any cause of action against defendants; and that the provisions of the May 1975 Act are not violative of either the Constitution of the United States or the State of New York.

In determining whether subsequent legislation impairs the obligation of a contract, the essential question is the existence of a contractual relation (Cook v City of Binghamton, 48 NY2d 323). While the presumption against the existence of a contract is stronger where plaintiff relies upon general rather than special legislation, the elements necessary to a contractual agreement must still be shown; i.e., that the language and circumstances manifest a legislative intent to create private rights of a contractual nature enforceable against the State, and that contractual elements such as bargained-for exchange between the parties, consideration and detrimental reliance exist (Cook v City of Binghamton, supra; Pennsylvania R.R. Co. v State of New York, 11 NY2d 504; People v Brooklyn Garden Apartments, Inc., 283 NY 373). Plaintiffs failed to prove any of the elements necessary to a contractual relation; therefore, their claim of contract impairment fails.

Plaintiffs' constitutional challenge of certain provisions of the May 1975 Act appears to be an attempt to invalidate the reorganization provision as unconstitutional by association, since they claim that it would not be severable from the alleged unconstitutional portions. The challenges are without merit and, even had they been found otherwise, the severability clause of the Act would allow the reorganization plan to stand apart. (Appeals from Judgment of Monroe Supreme Court, Blauvelt, J. — Declaratory Judgment.) Present: Simons, J.P., Hancock, Schnepp, Callahan, Moule, JJ.

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ACTION NO. 1

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PRUDENCE J. CAMARDO, 793 Lee Road, Rochester, New York; ARTHUR FALZONE, 1514 Ridgeway Ave., Rochester, New York; HENRY J. PAPE, 1656 Creek Street, Rochester, New York; IVAN WAHLS and LILLIAN WAHLS, 223 Delmar Road, Rochester, New York; BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 4, 537 Denise Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 10, 263 Bakerdale Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 8, 1221 Lee Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 6, 729 Lee Road, Rochester, New York; DANIEL A. STETZEL, SR., 537 Denise Road, Rochester, New York,

Plaintiffs,

vs.

CITY OF ROCHESTER, NY, City Hall, Rochester, New York; BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, 13 S. Fitzhugh Street, Rochester, New York; BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, 1790 Latta Road, Rochester, New York; STATE OF NEW YORK: BRIGHTON COMMON SCHOOL DISTRICT, 600 Grosvenor Road, Rochester, New York; BRIGHTON TEN COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BRIGHTON FIVE COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, 910 Wegman

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

Road, Rochester, New York; BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, 2590 Atlantic Avenue, Penfield, New York; BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York,

Defendants.

ACTION NO. 2

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

ELLEN ANDERSON, 200 Norman Road, Rochester, New York and CHARLES and GERTRUDE LA VALLE, 110 Bastian Road, Rochester, New York, as residents, property owners and taxpayers residing in former Brighton five common school district, on behalf of themselves and all other similarly situated residents, property owners and taxpayers residing in said district, and BERNADETTE UEBLACKER, 560 E. River Road, Rochester, New York; JAMES and PATRICIA BRITT, 165 Bastian Road, Rochester, New York, as residents, property owners, taxpayers and parents of school age children residing in former Brighton five common school district, on behalf of themselves and all other similarly situated parents residing in said district,

Plaintiffs,

vs.

THE CITY OF ROCHESTER, City Hall, Rochester, New York; THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, 13 S. Fitzhugh Street, Rochester, New York; THE BOARD OF EDUCATION OF THE RUSH-

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York; and THE STATE OF NEW YORK,

Defendants.

The issues in this action for declaratory judgment having come on to be heard before this Court at a Trial Term thereof held at the Hall of Justice in the City of Rochester, New York before Justice Arthur Ervin Blauvelt without a jury on November 6, 8, 9, 13 and 14, 1978 and the Plaintiffs in Action No. 1 having appeared by Culley, Marks, Corbett, Tanenbaum, Reifsteck and Potter, William M. Marks, Burton D. Tanenbaum and Jeffrey P. Marks, Esqs. of Counsel; and the Plaintiffs in Action No. 2 having appeared by Robert D. O'Connell, Robert D. O'Connell and James Coniglio, Esqs. of Counsel; and the Defendant Board of Education of Greece Central School District having appeared by Easton, Bittker & DeLuca, William E. Easton and David V. DeLuca, Esqs. of Counsel; and the Defendant State of New York having appeared by Lewis J. Lefkowitz, Attorney General of the State of New York by Richard A. Dutcher, Assistant Attorney General, Paul O. Harrison of Counsel; and the Defendant City of Rochester, New York having appeared by Louis N. Kash, Corporation Counsel, Reynolds E. Hahn, Esq. of Counsel; and the Defendant Board of Education of the City School District, City of Rochester having appeared by Adam D. Kaufman, Michael B. Kirschen, Esq. of Counsel and the Defendant Board of Education of Rush-Henrietta Central School District having appeared by Robert H. Wendt, Esq. and the Plaintiffs in both Action No. 1 and Action No. 2 having presented their proofs and rested and the Court having made its Bench decision orally that the Plaintiffs have failed to prove Chapter 125 of the Laws of 1975 of the State of New York is an unconstitutional

enactment of the New York State Legislature, that Chapter 125 of the Laws of 1975 of the State of New York was a constitutional enactment which was not repugnant to either the constitution of the United States or the State of New York, and that the Plaintiffs failed to prove the breach of any contractual obligation or prove any cause of action against the Defendants and granting judgment of non-suit in favor of the Defendants dismissing the complaints of the Plaintiffs for failure to prove a cause of action and directing that judgment be entered accordingly.

Now on motion of Easton, Bittker & DeLuca, attorneys for the Defendant Board of Education of Greece Central School District it is

ADJUDGED AND DECREED that the provisions of Chapter 125 of the Laws of 1975 of the State of New York, as amended, are constitutional and have not been proven to violate either the constitution of the United States of America or the State of New York and it is further

ADJUDGED AND DECREED that the Plaintiffs have failed to prove a breach of any contractual obligation between the parties or any cause of action against the Defendants of any of them and it is further

ADJUDGED AND DECREED that the complaints herein are dismissed for failure of the Plaintiffs to prove a cause of action and it is further

ADJUDGED AND DECREED that the motions of the Defendants and Plaintiffs for Summary Judgment are denied, the motion of Defendants to strike certain testimony, to strike the answers to the interrogatories contained in Exhibit 3 and Exhibit 5 and the so called Anderson deed from Remington Anderson in 1917 is denied and the motion of the Defendant

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

City of Rochester and Board of Education of the City School District to strike certain paragraphs of the complaint is denied and it is further

ORDERED AND DECREED that all other motions on which the Court reserved decision during trial have become academic in view of the disposition of this case and are not passed upon.

ADJUDGED AND DECREED that the Defendants herein recover of the Plaintiffs' costs and disbursements of this action as taxed in the sum of $400.00 to be divided equally among the defendants.

Approved as to form:

CULLEY, MARKS, CORBETT,
TANENBAUM, REIFSTECK & POTTER

By BURTON D. TANENBAUM

ATTORNEYS FOR COMARDO, et al

ROBERT D. O'CONNELL

By

ATTORNEY FOR ANDERSON, et al

ROBERT ABRAMS, Attorney General, by
PAUL O. HARRISON, ASSISTANT ATTORNEY GENERAL

By PAUL O. HARRISON

ATTORNEYS FOR STATE OF NEW YORK

LOUIS K. NASH

By LOUIS N. KASH By REYNOLDS E. HAHAN

ATTORNEYS FOR CITY OF ROCHESTER

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ADAM D. KAUFMAN

By ADAM D. KAUFMAN

ATTORNEY FOR CITY SCHOOL DISTRICT
CITY OF ROCHESTER

ROBERT H. WENDT

By ROBERT H. WENDT

ATTORNEY FOR BOARD OF EDUCATION
RUSH-HENRIETTA SCHOOL DISTRICT

Signed March 30, 1979.

ENTER:

/s/ ARTHUR ERVIN BLAUVELT
JUSTICE OF THE SUPREME COURT

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APPENDIX D — Notice of Appeal filed June 29, 1981 in the Court of Appeals of the State of New York and in Supreme Court of the State of New York, Monroe County, being the Court possessed of the record

STATE OF NEW YORK
COURT OF APPEALS

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs. Action No. 1

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

APPENDIX D — Notice of Appeal filed June 29, 1981 in the Court of Appeals of the State of New York and in Supreme Court of the State of New York, Monroe County, being the Court possessed of the record

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs. Action No. 2

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

NOTICE OF APPEAL TO
THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Prudence J. Camardo; Arthur Falzone, Henry J. Pape, Ivan Wahls, Lillian Wahls, and all persons similarly situated, Board of Education of Union Free School District No. 4, Board of Trustees of Common School District No. 10, Board of Trustees of Common School District No. 8, Board of Trustees of Common School District No. 6; All of the Town of Greece, and Daniel A. Stetzel, Sr., the appellants above-named, hereby appeal to The Supreme Court of The United States from the final order of the Court of Appeals of the State of New York dismissing the appeal filed therein, entered in this suit on April 9, 1981.

APPENDIX D — Notice of Appeal filed June 29, 1981 in the Court of Appeals of the State of New York and in Supreme Court of the State of New York, Monroe County, being the Court possessed of the record

This appeal is taken pursuant to Title 28, United States Code, Section 1257, sub paragraph.

Dated: June 24, 1981

/s/ DONALD F. POTTER
Donald F. Potter, Esq. Of Counsel
CULLEY, MARKS, CORBETT,
TANENBAUM, REIFSTECK & POTTER
Attorneys for Appellants
Office and P.O. Address
36 Main Street West
Rochester, New York 14614